

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0444
Sales/Use Tax
For Years 1997 and 1998

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ISSUES

I. Sales/Use Tax – Interstate commerce

Authority: IC 6-2.5-4-1; IC 6-2.5-2-1; 45 IAC 2.2-2-2; IC 6-2.5-8-8, 45 IAC 2.2-5-53(b); 45 IAC 2.2-5-53(a); IC 6-2.1-3-3; 45 IAC 1-1-119(2)(b); 45 IAC 2.2-5-54; IC 6-2.5-5 et al.

Taxpayer protests the imposition of sales tax on transactions where an item purchased in Indiana is subsequently and immediately moved out of state via interstate commerce.

STATEMENT OF FACTS

Taxpayer makes custom decals for its customers. The decals are primarily used on semi-trailers. Taxpayer also installs the decals on the semi-trailers at several locations. The sales of the decals is done only through one of taxpayer's Indiana locations.

Several out-of-state customers made use of the taxpayer's products and services. The customers drove their trucks to one of the taxpayer's Indiana locations to purchase the decals. The decals may or may not have been installed in Indiana. However, in all cases, the sales of the decals took place in Indiana. Sales tax was not collected for any of the transactions in question.

DISCUSSION

I. Sales/Use Tax – Interstate commerce

Taxpayer, in the ordinary course of its regularly conducted business, acquires tangible personal property for the purpose of resale and transfers that property to another person for consideration. These activities qualify taxpayer as a retail merchant. IC 6-2.5-4-1. As such, the retail merchant, acting as an agent for the state, must collect sales tax from its customers against whom the tax is levied under IC 6-2.5-2-1. 45 IAC 2.2-2-2. However, certain exemptions apply to the assessment of sales tax.

One such instance of exemption from sales tax comes from the issuance of exemption certificates. IC 6-2.5-8-8 speaks to the matter:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption

certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the Department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(b) The following are the only persons authorized to issue exemption certificates:

(1) Retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;

(2) Organizations which are exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 and which are registered with the department under this chapter; and

(3) Other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

Several of taxpayer's customers validly and legally submitted exemption certificates at the time of their purchase of taxpayer's products. For those transactions, there is no controversy. Other of taxpayer's customers did not submit exemption certificates. It is for these transactions that the controversy exists.

Taxpayer claims that these customers were not able to obtain exemption certificates, for various reasons, from the State of Indiana. The Department has no reason to doubt this assertion.

Taxpayer was able to obtain from these customers a form, an ST-136A Indiana Out-of-State Purchasers Sales Tax Exemption Affidavit, that can serve as an alternative to the exemption certificate for those businesses unable to obtain them. The issue surrounding the use of these forms is: Does the information on the forms establish an exempt nature for the transactions at issue?

The problem lies in the fact that these forms indicate no valid reason to grant exempt status to the transactions they cover. The probative notation on these forms comes under the following query: "I hereby certify under penalty of perjury that the property described above is purchased exempt from Indiana sales tax for the following reasons:". For each of the forms submitted, the entry is the same: "Property being transported out of state."

It therefore follows that taxpayer's argument can be summed up as such: Because taxpayer's customers take the products they purchase from taxpayer and transport them out of state, these transactions are exempt from sales tax consideration. Nothing in the law supports this argument.

The state gross retail tax does not apply to sales from transactions constituting retail transactions that are in interstate commerce and which the state of Indiana is prohibited from taxing by the Constitution of the United States of America. 45 IAC 2.2-5-53(b). 45 IAC 2.2-5-53(a) leads to the conclusion that the gross income tax and its provisions as guiding, specifically pointing to IC 6-2.1-3-3:

The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-3.

IC 6-2.1-3-3 reads:

Gross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign country is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United State Constitution.

Taking 45 IAC 2.2-5-53(a) and IC 6-2.1-3-3 together, this means one must look to the gross income tax regulations to determine when gross retail tax regulations apply.

The situation found here, where an out-of-state customer purchases tangible personal property in Indiana and then transports that property out of state, is classified as a taxable outshipment. For gross income tax purposes, taxable outshipments are defined in 45 IAC 1-1-119(2)(b), which defines one particular type of taxable outshipment as:

Sales to nonresidents where the goods are accepted by the buyer or he takes *actual delivery* within the State. Sales will also be taxable if the goods are shipped out of state on bills of lading showing the seller, buyer or a third party as shipper if the goods were inspected and accepted, or when the sales were completed prior to shipment in interstate commerce. (Emphasis added.)

Because taxpayer's customers take actual delivery of taxpayer's products in Indiana, they would be subject to gross income tax for these transactions, and are therefore subsequently subject to gross retail tax.

45 IAC 2.2-5-54 also directly speaks to this point:

(a) Delivery to purchaser in Indiana. Sales of tangible personal property which are delivered to the purchaser in Indiana are subject to gross retail tax or use tax, except (see Regs. 6-2.5-5-15(020) [45 IAC 2.2-5-22]) for certain sales of motor vehicles and aircraft.

As taxpayer delivers its products to its customers in Indiana, and because the sales in question do not qualify for any of the aforementioned exceptions, this section applies.

Finally, in IC 6-2.5-5 et. al., several exemptions to the gross retail tax are listed under the heading "Exempt Transactions of a Retail Merchant." This list is extensive and presumably exhaustive. A thorough reading of these exemptions lists nothing that could possibly encompass the transactions in question.

FINDINGS

The taxpayer is respectfully denied.

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